

Message

From: Willard, Daniel [DWillard@idem.IN.gov]
Sent: 9/13/2017 7:18:09 PM
To: Hurl, Kathy [Hurl.Kathy@epa.gov]
CC: Swenson, Peter [swenson.peter@epa.gov]; Melgin, Wendy [melgin.wendy@epa.gov]; McDavit, Michael W. [Mcdavit.Michael@epa.gov]
Subject: RE: 404 Assumption Templates

Kathy,

This is not frustrating at all, but rather more than I expected! I have spent quite a few days putting together my own table that looks very similar to the draft you have included, so this draft will be immensely helpful.

As for what else I have been consulting, in retrospect I should not have used the word "guidance" earlier. I simply meant that I had found a lot of material to look at, not only through EPA's website and the handbook you mention, but also through other state's websites and feasibility studies. To me, as a newcomer to this subject matter, virtually everything I see is instructive.

We are very early in this process, so I have no doubt that we will be speaking with EPA regularly as we develop our programs!

Thank you very much for your email.

Daniel

-----Original Message-----

From: Hurl, Kathy [mailto:Hurl.Kathy@epa.gov]
Sent: Wednesday, September 13, 2017 2:49 PM
To: Willard, Daniel <DWillard@idem.IN.gov>
Cc: Swenson, Peter <swenson.peter@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: FW: 404 Assumption Templates

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Dear Daniel,

First sorry for the delay in getting back to you. It is wonderful to hear IN is actively pursuing assumption of the CWA section 404 program. I think I have some good but slightly frustrating news for you. Because each state program is different, based upon the state's statutes and regulations, we do not have templates to follow or fill out. This means there is no single format we expect to see; which gives you the flexibility to demonstrate how the IN program complies with the requirements of the Act.

I'd be curious to know which guidance materials you have found for CWA section 404(g) as the EPA has not published guidance for this program. We do have individual letters or positions regarding certain aspects of the program requirements and the Association of State Wetland Managers put together a handbook to help states as they consider assumption.

I am happy to share the position letters with you (e.g., the attached letter which clarifies EPA does not need to undertake ESA section 7 consultation when approving a state CWA section 404 program). I have also attached a draft chart some states have found helpful as they begin evaluating their authorities. The chart is provided for informational purposes only. If you find it useful, wonderful, if not, just delete it. I have provided two versions of the chart one is blank while the other has some examples of (anonymous) state authorities informally reviewed by the EPA that are included in the third and fourth columns to demonstrate how some states have used this. You'll note these are short notations and not a full description of the state authority, which is why it is a tool and not a template.

What we do strongly recommend is that you work with EPA prior to submitting an application request. We have very knowledgeable folks in our Chicago office (Wendy Melgin, Peter Swenson and their staff) who are ready, willing and able to provide technical assistance to you as you develop your package. I too am available to answer questions and help. Successful efforts looking into assumption (by successful, I mean those that have assumed the program and those that took a serious look at it but may have chosen not to assume) have all had a strong relationship between the state and EPA, discussing the requirements, identifying any potential program gaps and discussing ideas of how to potentially address any gaps.

EPA is ready and willing to help you and answer any additional questions you may have.

Sincerely,

Kathy Hurld

From: Willard, Daniel <DWillard@idem.IN.gov>
Sent: Monday, September 11, 2017 10:15 AM
To: Hurld, Kathy
Cc: Melgin, Wendy; Swenson, Peter
Subject: 404 Assumption Templates

Kathy,

I've been working on Indiana's AG letter as we begin putting together our assumption package. I have been modelling it on New Jersey's letter.

I've found a lot of guidance materials for assumption, but wondered if there are any templates that you recommend that we use at any point in the process (apart from the wetlands WQS templates).

Thank you,

Daniel Willard
OLC | Staff Attorney
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